

# **EXHIBIT 120**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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NIKE, INC.,

Plaintiff,

vs.

CASE NO. 1:22-CV-00983-VEC

STOCKX LLC,

Defendant.

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VIDEOTAPED DEPOSITION OF SARAH BUTLER

San Francisco, California

Tuesday, August 15, 2023

Stenographically Reported by: Ashley Soevyn,

CSR No. 12019

Job No. 5968272

Pages 1 - 224

1 UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

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5 NIKE, INC.,

6 Plaintiff,

7 vs.

CASE NO. 1:22-CV-00983-VEC

8 STOCKX, LLC,

9 Defendant.

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15 Videotaped Deposition of  
16 SARAH BUTLER, taken on behalf of the Plaintiff Nike,  
17 Inc., Pursuant to Notice, at the offices of DLA  
18 Piper, 555 Mission Street, San Francisco, California  
19 beginning at 8:56 a.m. and ending at 4:51 p.m. on  
20 Tuesday, August 15, 2023, before me, ASHLEY SOEVYN,  
21 Certified Shorthand Reporter No. 12019.  
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1 this case as to whether sales of Nike and  
2 Jordan-branded goods on StockX's platforms are  
3 attributable to the false and/or misleading claims  
4 made by StockX?

5 MR. FORD: Object to form.

6 THE WITNESS: And so, the reason I  
7 clarified with the word "data" is I've not been  
8 asked to look at sales data. I've been asked to  
9 look at whether or not the allegedly false  
10 statements have an impact on consumers willingness  
11 to use the StockX platform.

12 BY MR. MILLER:

13 Q Okay. Understood. And is that what  
14 you've been asked to look at, that assignment  
15 responding to the issue of whether or not the sales  
16 of Nike and Jordan-branded goods on StockX's  
17 platform are attributable to the false and/or  
18 misleading claims made by StockX?

19 A And just to clarify, when you say  
20 "sales," I'm understanding that to mean actual sales  
21 data that have or sales that have occurred. I'm not  
22 applying or calculating some rate at which sales are  
23 or are not attributable. I've been asked to design  
24 a survey to evaluate whether or not these statements  
25 have an impact on consumer purchasing behavior and

1 the results show that they don't.

2 Q So if I'm understanding you correctly,  
3 you are offering an expert opinion in this case as  
4 to whether consumers were interested in purchasing  
5 Nike and Jordan-branded goods on the StockX platform  
6 because of the false and/or misleading claims made  
7 by StockX?

8 MR. FORD: Object to form of the  
9 question.

10 THE WITNESS: I don't think that's quite  
11 how I'd characterize it. The survey evaluates  
12 whether or not the presence or absence of the  
13 allegedly false or misleading claims would have an  
14 impact on consumers interest in using the StockX  
15 website.

16 Q To purchase Nike or Jordan-branded  
17 sneakers?

18 A They are certainly shown Nike or --  
19 sorry, did you say Jordan --

20 Q Yes.

21 A -- sneakers? They are certainly shown  
22 that as part of the survey. So yes, those sneakers  
23 are present and held constant in the test and the  
24 control.

25 Q Is your survey designed to test consumer

1 advertising claim from the rest of the advertising  
2 claims that you were testing?

3 A I'm not sure what you mean by "isolate."

4 Q What do you understand the word "isolate"  
5 to mean?

6 A Well, I understand the word "isolate." I  
7 don't understand what you mean in the context of the  
8 survey. It is shown on a separate page, that is a  
9 different page from other pages that were shown.

10 Q So is that how you were able to isolate  
11 the 100 percent advertising -- sorry, the 100  
12 percent authentic advertising claim from the other  
13 advertising claims that you were testing?

14 A Again, not sure what you are intending to  
15 mean by isolate. The 100 percent authentic claim  
16 was shown as part of the pages that were tested in a  
17 survey as it appears in the real world, or had  
18 appeared in the real world.

19 Q And is it your opinion that consumers  
20 interest in purchasing Nike or Jordan-branded goods  
21 on StockX's platform is not attributable to the  
22 100 percent authentic advertising claim?

23 A Well, the survey results demonstrate that  
24 the authentication claims including -- yeah, the  
25 authentication claims or statements including the

1 100 percent authentic statement, does not have an  
2 impact on consumers willingness to purchase a pair  
3 of sneakers using the StockX platform.

4 Q And again, focusing just on the  
5 advertising claim of 100 percent authentic, does  
6 your survey measure the impact of that particular  
7 advertising claim had on consumer purchasing  
8 decisions?

9 A Well, if I understand your question, the  
10 survey does measure the extent to which 100 percent  
11 authentic as well as other advertising claims had an  
12 impact on consumers willingness to purchase sneakers  
13 using the StockX platform.

14 Q Okay. But separate from the other  
15 advertising claims that tested, does your survey  
16 measure the impact that the 100 percent authentic  
17 advertising claim had on consumer purchasing  
18 decisions?

19 A Well, since the impact is essentially  
20 zero that we measure, I mean, you could portion out  
21 zero. But zero cut into pieces is still zero, so it  
22 doesn't have an impact. I mean, the survey results  
23 demonstrate that there is not an impact of using the  
24 authentication statements relative to those  
25 statements not appearing.

1 report that I believe the data from my survey can be  
2 used to address or can inform a response to.

3 Q So you're not directly rebutting the  
4 portion of Mr. Hansen's opinion that you just  
5 pointed me to?

6 A I certainly --

7 MR. FORD: Objection to the form of the  
8 question. Sorry.

9 THE WITNESS: Apologies. I am certainly  
10 providing an opinion that is responsive to an  
11 assessment that the profits or sales or consumers --  
12 the revenue is all derived from these false and  
13 misleading statements. So the impact of the false  
14 and misleading statements.

15 Q So your expert report is not titled  
16 opinion that's responsive to that portion of  
17 Mr. Hansen's opinion, right?

18 A If you're simply asking me what the title  
19 of the report is, it's Expert Rebuttal Report of  
20 Sarah Butler. And then, I think in paragraph 8, as  
21 we've discussed at length, I articulate and  
22 reference the paragraph in Mr. Hansen's report -- he  
23 has another similar paragraph in his amended report  
24 to which I am responding and I explain in paragraph  
25 9 what the assignment was.



1 Q On what?

2 A That depends on the population to which  
3 you're trying to extrapolate. It depends on the  
4 manner in which the sample was drawn. It depends on  
5 the results that are observed. So it depends.

6 Q Okay. In this case, do you believe that  
7 409 respondents that completed the survey met that  
8 minimum threshold?

9 A Well, the 409 respondents are certainly a  
10 sufficient sample size to allow me to assess whether  
11 there is a statistically significant difference in  
12 the distribution of likelihood of purchasing between  
13 the two groups. And I've run those tests across a  
14 whole array of different calculations, and the  
15 results demonstrate that the results aren't  
16 statistically significantly different between the  
17 two groups.

18 Q Okay. What factors or facts did you  
19 consider to make the assessment that 409 respondents  
20 that took your survey were a sufficient sample size?

21 A So by running the statistical test I can  
22 evaluate whether or not there is a difference  
23 between the two groups.

24 I mean, typically, you can run a  
25 difference of proportions between two populations

1 even at sample sizes of 50. So certainly 409, two  
2 hundred in each group, is a sufficient amount of  
3 data to evaluate whether there is a statistically  
4 significant difference between the distribution of  
5 responses between the two populations.

6 Q Did you consider any factors about the  
7 population to which you are trying to extrapolate  
8 when deciding that 409 respondents were a sufficient  
9 population for this study?

10 A So if I'm understanding your question, I  
11 have not extrapolated with a confidence interval  
12 around the results here to some other population.  
13 The study is designed to evaluate whether there is a  
14 statistically significant difference between the two  
15 groups that are being measured. And we have  
16 sufficient amounts of data to allow us to evaluate  
17 whether the variation between the purchase intention  
18 between these two groups is statistically  
19 significantly different.

20 Q Okay. When you say you "have not  
21 extrapolated with a confidence interval around  
22 results here to some other population," what do you  
23 mean?

24 A Well, you're using the word extrapolation  
25 which to me means I have a point estimate here